PB81-130783

National Municipal Policy and Strategy for Construction Grants, NPDES Permits, and Enforcement Under the Clean Water Act

(U.S.) Environmental Protection Agency
Washington, DC

Oct 79

U.S. Department of Commerce
National Technical Information Service
NTIS.

TECHNICAL REPORT DATA
(Please read Instructions on the reverse before completing)

1. REPORT NO.	2.	3. RECIPIENT'S ACCESSION NO.
		PB81 130783

4. TITLE AND SUBTITLE	5. REPORT DATE
National Municipal Policy and Strategy	October 1979
	6. PERFORMING ORGANIZATION CODE: OWE/OWP
7. AUTHOR(S)	8. PERFORMING ORGANIZATION REPORT NO.
9. PERFORMING ORGANIZATION NAME AND ADDRESS: Office of Water Enforcement/Office of Water Program Operations, Washington, D.C. 20460	10. PROGRAM ELEMENT NO.: 2BG647
	11. CONTRACT/GRANT NO.
12. SPONSORING AGENCY NAME AND ADDRESS: Office of Water Enforcement, U.S.E.P.A. - 401 M. St., S.W., Washington, D.C. 20460	13. TYPE OF REPORT AND PERIOD COVERED: Final
	14. SPONSORING AGENCY CODE: 700/02

15. SUPPLEMENTARY NOTES

16. ABSTRACT

To respond to the municipal noncompliance problem, EPA developed in October, 1979, a National Municipal Policy and Strategy for more effectively managing municipal compliance with the Clean Water Act. Its goal is to integrate permits, enforcement, and construction grant activities by:

- Issuing, to qualified POTWs, extensions with enforceable compliance schedules based on grant funding, in the form of permits and administrative orders;
- Coordinating with States to develop State Project Priority Lists which assure that grant funding is allocated to projects necessary to meet the enforceable requirements of the Act before funding is allocated to other projects, to the extent authorized by law; and
- Laying the foundation to permanently coordinate grant, permits, and enforcement operating practices with the aim of streamlining compliance by municipalities while simultaneously removing impediments to enforcement actions, if needed.

The report describes the processes and procedures municipalities must meet to comply with the program.

17. KEY WORDS AND DOCUMENT ANALYSIS

a. DESCRIPTORS	b. IDENTIFIERS/OPEN ENDED TERMS	c. COSATI Field/Group
Water pollution control, Municipal Wastewater treatment, Policies, Regulations, Grants, Enforcement	Clean Water Act of 1977, Sewage Treatment Plants, POTW Construction Grants	

18. DISTRIBUTION STATEMENT	19. SECURITY CLASS *(This Report)*	21. NO. OF PAGES
Release to the public	unclassified	
	20. SECURITY CLASS *(This page)*	22. PRICE
	unclassified	

EPA Form 2220-1 (Rev. 4-77) PREVIOUS EDITION IS OBSOLETE

United States
Environmental Protection
Agency

Office of
Water Program Operations
Washington, DC 20460

Office of Water Enforcement

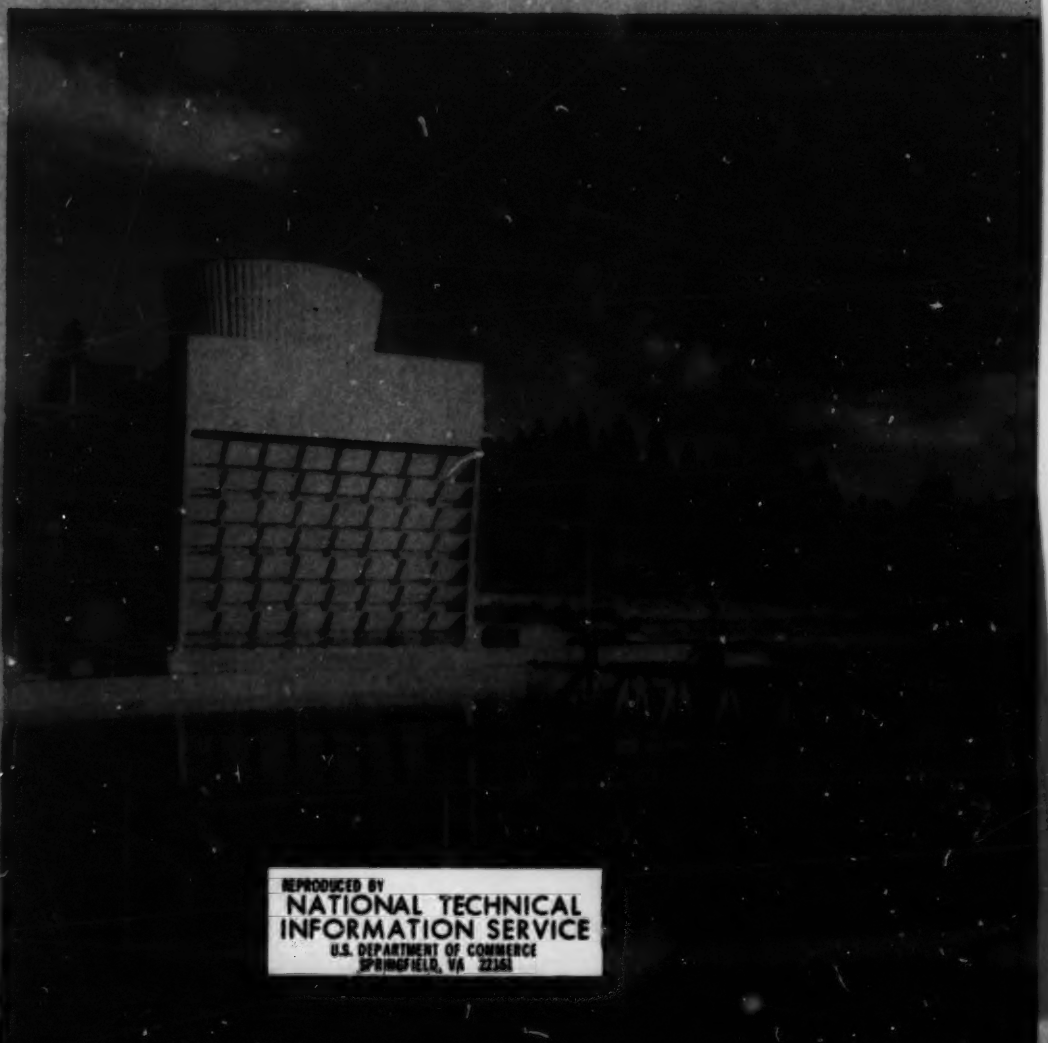
Water

PB81-130783

National Municipal Policy and Strategy

For Construction Grants, NPDES Permits, and Enforcement Under the Clean Water Act

October 1979



REPRODUCED BY
NATIONAL TECHNICAL
INFORMATION SERVICE
U.S. DEPARTMENT OF COMMERCE
SPRINGFIELD, VA 22161

NOTES

General Services Administration (8FFS)
Centralized Mailing List Services
Bldg. 41, Denver Federal Center
Denver, CO 80225

Please indicate the ordering number and title of publication.

NATIONAL MUNICIPAL POLICY AND STRATEGY

For Construction Grants, NPDES Permits, and
Enforcement Under the Clean Water Act

U.S. Environmental Protection Agency
Office of Water Enforcement
Office of Water Program Operations

October 1979

PREFACE

A majority of municipal dischargers, for a variety of reasons, have not complied with the Clean Water Act's July 1, 1977 treatment requirements. These discharges contribute a substantial pollutant load into the waters of the United States.

This National Municipal Policy and Strategy, published after months of comment and discussion, will serve to guide Regions and States in a productive period of activity aimed at achieving the Clean Water Act's goals of fishable and swimmable waters, in part through full municipal compliance.

To give effect to this National Municipal Policy and Strategy, I have directed the Deputy Assistant Administrators for Water Enforcement and Water Program Operations to produce a Municipal Management System. I have further directed the Deputy Regional Administrators to work directly with the Program Offices to implement the management system.

Douglas M. Costle
Administrator

OUTLINE

		Page
I	Introduction	1
II	Legislative Background	3
III	Status and Scope of Municipal Noncompliance	5
	o Description of Noncompliance Problem o Remedies to the Noncompliance Problem	
IV	Municipal Noncompliance Classification Process	8
	o Purpose o 301(i)(1) Initial Test o POTWs With Active Grants o POTWs Without Active Grants o POTWs Which Have Completed Construction	
V	Issuance of 301(i)(1) Extensions	16
	o The Relationship of Section 301(h) to Section 301(i)(1)	
VI	Issuance of 309(a)(5)(A) Administrative Orders	22
VII	Priorities for Issuance of Extensions and Administrative Orders	27
	o Pretreatment Priorities o Funding Availability and Schedule Development	
VIII	Treatment More Stringent Than Secondary	33
IX	Municipal Referral Priority System	37
	o Purpose o Scope o Effect of 301(i)(1) Request on Initiated Referrals o Procedure o Special Enforcement: Public Health and Fragile Ecosystems o Special Enforcement: Category IV o Implementation	
X	Formulating a Municipal Management System	42

Preceding page blank

PART I: INTRODUCTION

An analysis of compliance indicates that the majority of publicly-owned treatment works (POTWs) have not completed construction necessary to meet the 1977 treatment requirements. Many of these POTWs are eligible for relief from enforcement under the Clean Water Act (P.L. 95-217) by the provision in section 301(i)(1) that provides for extensions of the time for compliance until no later than July 1, 1983. In response to this and other provisions applicable to municipalities, EPA has developed a National Municipal Policy and Strategy for more effectively managing municipal compliance with the Clean Water Act. The goal is to integrate permits, enforcement, and construction grant activities by:

- issuing, to qualified POTWs, extensions with enforceable compliance schedules based on grant funding, in the form of permits and administrative orders;
- coordinating with States to develop State Project Priority Lists which assure that grant funding is allocated to projects necessary to meet the enforceable requirements of the Act before funding is allocated to other projects, to the extent authorized by law; and
- laying the foundation to permanently coordinate grant, permits, and enforcement operating practices with the aim of streamlining compliance by municipalities while simultaneously removing impediments to enforcement actions, if needed.

The National Municipal Policy and Strategy under the Clean Water Act contains: (1) a process for determining whether a permittee will be eligible for a permit extension, be issued an administrative order, or be subject to referral for judicial action; (2) a brief description of how Construction

Grant and Permit staffs will coordinate in the issuance of National Pollutant Discharge Elimination System (NPDES) permits containing actual dates based on grant schedules as compliance milestones; (3) a brief description of how Construction Grants and Enforcement staffs will coordinate to produce administrative orders containing grant-based compliance schedules; and (4) a brief description of the relationship of permit and enforcement actions to State Project Priority Lists (PPLs) and the Clean Water Act's enforceable requirements.

PART II: LEGISLATIVE BACKGROUND

Section 301(i)(1) provides relief to POTWs which did not have adequate Federal funding in time to meet the 1977 treatment requirements. This section authorizes permit issuing authorities to grant timely requests for extensions of the July 1, 1977 treatment deadline, "where construction is required . . . to achieve limitations . . . but . . . (B) the United States has failed to make financial assistance under this Act available in time" (emphasis added). Any permit issued or modified under section 301(i)(1) must contain, among other terms and conditions, "a schedule of compliance . . . based on the earliest date by which such financial assistance will be available . . . and construction can be completed, but in no event later than July 1, 1983" (emphasis added).

Section 216 authorizes the Administrator to remove a project from a State's priority list, "if the Administrator, after a public hearing, determines that a specific project will not result in compliance with the enforceable requirements of this Act" (emphasis added). The enforceable requirements of the Act include the conditions of an NPDES permit, or where no permit applies, any condition which the Regional Administrator determines necessary to meet applicable criteria for best practicable wastewater treatment technology (see 40 CFR 35.905).

Since they also affect compliance with the Clean Water Act, several other sections have a direct effect on POTWs and the National Municipal Policy and Strategy. Sections 307(b) and (c) and 402(b)(8), as implemented by 40 CFR 403,

require certain POTWs to have a pretreatment program in place and approved by no later than July 1, 1983. Section 301(h) authorizes applications for modification of the secondary treatment requirements for certain POTWs discharging into marine and estuarine waters (see 40 CFR 125, Subpart G) -- many POTWs have requested both 301(i)(1) permit extensions and 301(h) permit modifications.

PART III: STATUS AND SCOPE OF MUNICIPAL NONCOMPLIANCE

Description of the Noncompliance Problem

POTW compliance with the July 1, 1977 treatment deadline has been classified as follows:

CATEGORY I — POTWs that need construction to comply; did not significantly contribute to the delay in construction; construction grant funding is or will be available to assist in complying; and can complete construction by the 1983 deadline.

CATEGORY II — POTWs that need construction to comply; did not significantly contribute to the delay in construction; construction grant funding through Step 3 is available to assist in complying; but cannot complete construction by the 1983 deadline.

CATEGORY III — POTWs that need construction to comply; did not significantly contribute to the delay in construction; for which construction grant funding through Step 3 does not appear to be available by July 1, 1983, and consequently, may not complete construction by the 1983 deadline.

CATEGORY IV — POTWs that need construction to comply and are causing significant public health or pollution problems, but due to lack of position on project priority lists, may require judicial action to assure prompt achievement of NPDES permit requirements.

CATEGORY V — POTWs that have completed construction and are not meeting effluent limitations or other NPDES requirements.

CATEGORY VI — POTWs that need construction to comply and did significantly contribute to the delay in construction.

Remedies to the Noncompliance Problem

Major municipal compliance with the treatment requirements of the Clean Water Act along with the Major Source Enforcement Effort (MSEE) for industrial dischargers are the primary water enforcement priorities. Now that the number of major industrial sources out of compliance has been reduced, enforcement actions aimed at significant POTWs which have not installed secondary or more

stringent treatment will be stepped up in accordance with procedures discussed in this National Municipal Policy and Strategy.

Initially, placing POTWs on enforceable compliance schedules is essential to an effective municipal compliance effort. The methods of accomplishing this are:

(1) Section 301(i)(1) extensions to qualified POTWs, as discussed in Part V;

(2) Section 309(a)(5)(A) administrative orders or comparable State mechanisms, as discussed in Part VI, to certain POTWs unable to comply by July 1, 1983; and

(3) Referral for judicial action in appropriate cases, as discussed in Part IX.

A process for determining which compliance response is appropriate is described in Part IV. Procedures and priorities for administering each response are described in Parts V-IX.

Table A illustrates the six categories of municipal noncompliance and the appropriate Regional or NPDES State compliance responses.

TABLE A

CATEGORIES OF AND RESPONSES TO MUNICIPAL NONCOMPLIANCE[1]

CATEGORY	EXTENSION REQUESTED	301(i)(1) EXTENSION NOT REQUESTED		
		NO ECSL[2]	NONCOMPLIANCE WITH ECSL	COMPLIANCE WITH ECSL
Category I	Grant 301(i) request; issue permit with compl. schedule assuring completion of construction by 1983. Revoke ECSL.	Issue permit requiring immediate compliance and 309(a)(5)(A) Administrative Order(s) 3/ with compl. schedule assuring completion of construction by 1983.	Revoke ECSL; Continue permit and issue 309(a)(5)(A) Administrative Order(s) with compl. schedule assuring completion of construction by 1983.	Monitor compliance with ECSL
Category II and Category III	Deny 301(i) request; Issue permit, or continue permit where ESCL exists, requiring immediate compl. with secondary or more stringent treatment; Issue 309(a)(5)(A) Administrative Order(s) with compl. schedule not extending beyond 1983.	Issue permit requiring immediate compl. with secondary or more stringent treatment; Issue 309(a)(5)(A) Administrative Order(s) not extending beyond 1983.	Revoke ECSL; Continue permit requiring immediate compl. with secondary or more stringent treatment; Issue 309(a)(5)(A) Administrative Order(s) not extending beyond 1983.	Not Applicable[4]
Category IV	Deny 301(i) request; referral for judicial action.	Referral for judicial action.	Referral for judicial action.	Not Applicable.
Category V	Deny 301(i) request; Issue 309(a)(5)(A) Administrative Order(s) or referral for judicial action.	Issue 309(a)(5)(A) Administrative Order(s) or referral for judicial action.	Issue 309(a)(5)(A) Administrative Order(s) or referral for judicial action.	Not Applicable.
Category VI	Deny 301(i) request; referral for judicial action.	Referral for judicial action.	Referral for judicial action.	Not Applicable.

1/ Requests for 301(h) not included. (Note: 301(h) requests should be processed before 301(i) requests).
2/ ECSL means Enforcement Compliance Schedule Letter or a comparable State procedural mechanism.
3/ A 309(a)(5)(A) Administrative Order or a comparable State procedural mechanism.
4/ ECSL policy prohibited the issuance of ECSLs beyond the life of a NPDES permit (e.g., beyond July 1, 1983).

PART IV: MUNICIPAL NONCOMPLIANCE CLASSIFICATION PROCESS

Purpose

The process outlined in this part provides a systematic method to determine whether a POTW should receive a section 301(i)(1) permit extension, be issued a section 309(a)(5)(A) administrative order, or be subject to referral for judicial action. *

The flow diagram (Figure A) divides POTWs into two groups -- those with and those without active grants. POTWs with active grants which have not significantly contributed to a delay in funding or completion of construction will either be granted 301(i)(1) extensions or issued administrative orders in lieu of a 301(i)(1) permit extension, depending on whether the POTW submitted a timely request for an extension and can complete construction by July 1, 1983. POTWs which have significantly contributed to a delay in funding or subsequent construction will be candidates for referral for judicial action, or administrative orders. POTWs without active grants, particularly POTWs in Category III, should be moved into the grant process wherever possible.

301(i)(1) Initial Test

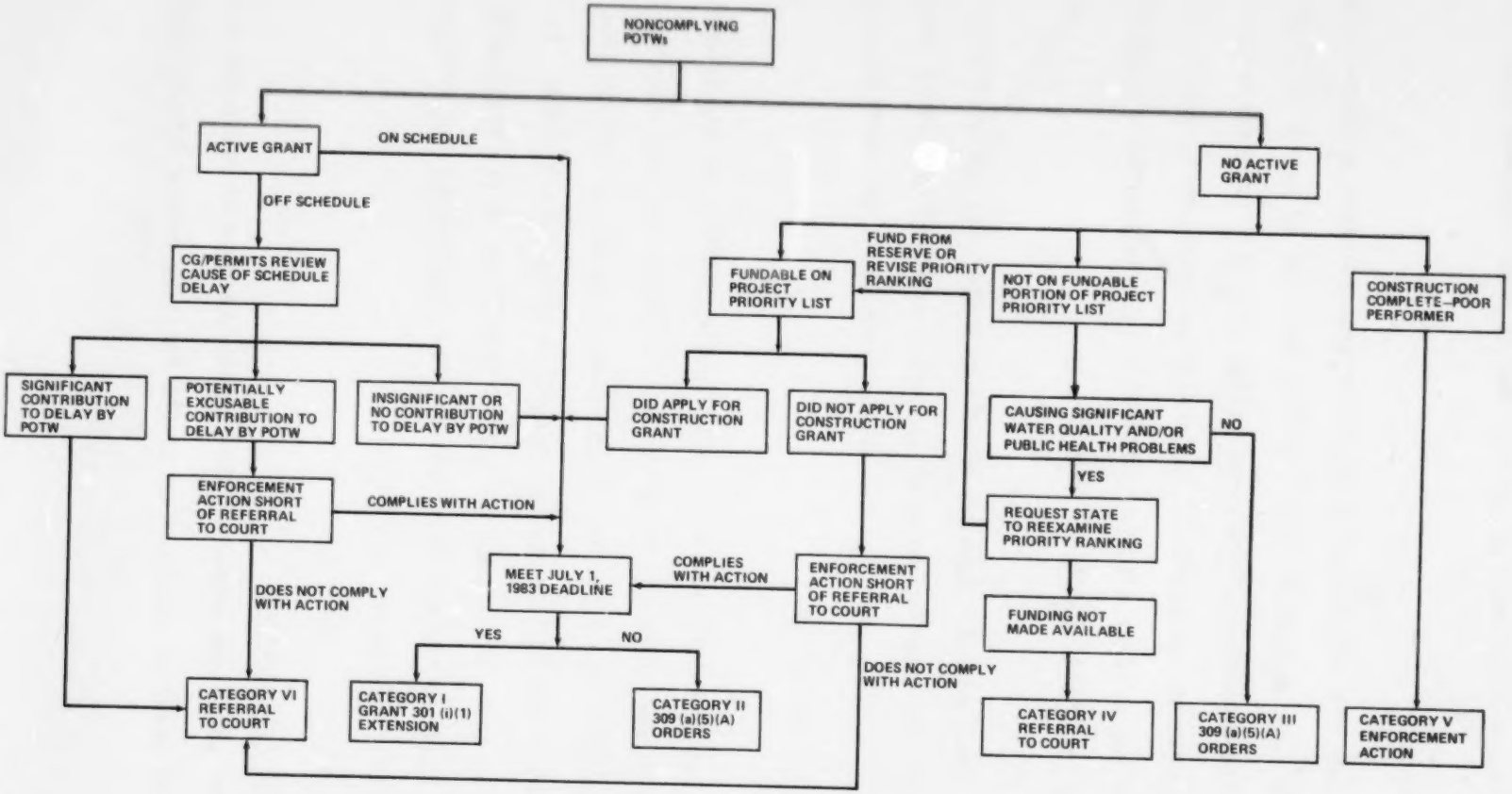
The 301(i)(1) regulations (40 CFR 125.93) state that no extension can be

---

* Part IX contains a discussion of when States with administrative penalty procedures should use administrative penalties first rather than referral for judicial action.

FIGURE A

PROCESS FOR CLASSIFYING STATUS OF NONCOMPLYING POTWs


NONCOMPLYING POTWs
ACTIVE GRANT
ON SCHEDULE
OFF SCHEDULE
NO ACTIVE GRANT
CG/PERMITS REVIEW CAUSE OF SCHEDULE DELAY
FUND FROM RESERVE OR REVISE PRIORITY RANKING
FUNDABLE ON PROJECT PRIORITY LIST
NOT ON FUNDABLE PORTION OF PROJECT PRIORITY LIST
CONSTRUCTION COMPLETE–POOR PERFORMER
SIGNIFICANT CONTRIBUTION TO DELAY BY POTW
POTENTIALLY EXCUSABLE CONTRIBUTION TO DELAY BY POTW
INSIGNIFICANT OR NO CONTRIBUTION TO DELAY BY POTW
DID APPLY FOR CONSTRUCTION GRANT
DID NOT APPLY FOR CONSTRUCTION GRANT
CAUSING SIGNIFICANT WATER QUALITY AND/OR PUBLIC HEALTH PROBLEMS
NO
YES
ENFORCEMENT ACTION SHORT OF REFERRAL TO COURT
COMPLIES WITH ACTION
REQUEST STATE TO REEXAMINE PRIORITY RANKING
MEET JULY 1, 1983 DEADLINE
COMPLIES WITH ACTION
ENFORCEMENT ACTION SHORT OF REFERRAL TO COURT
DOES NOT COMPLY WITH ACTION
FUNDING NOT MADE AVAILABLE
YES
NO
DOES NOT COMPLY WITH ACTION
CATEGORY VI REFERRAL TO COURT
CATEGORY I GRANT 301 (i)(1) EXTENSION
CATEGORY II 309 (a)(5)(A) ORDERS
CATEGORY IV REFERRAL TO COURT
CATEGORY III 309 (a)(5)(A) ORDERS
CATEGORY V ENFORCEMENT ACTION

granted unless a POTW requires construction to meet treatment requirements, and either:

(a) The issuance of a notice to proceed under a construction contract for any segment of Step 3 project work (or if notice to proceed is not required, the execution of the construction contract) occurred before July 1, 1977, but construction could not physically be completed by July 1, 1977 despite all expeditious efforts by the POTW (see initiation of construction as defined in 40 CFR 35.905 for Step 3); or

(b) Federal financial assistance either was not available, or was not available in time for construction required to achieve NPDES permit limitations, and the POTW did not in any significant way contribute to this unavailability or delay.

Section 301(i)(1) does not authorize the granting of any extensions where construction cannot be completed by July 1, 1983. For this reason, the section 301(i)(1) regulations (40 CFR 125.93) require States to certify that funding will be available in time to ensure compliance by July 1, 1983. It is anticipated that award dates for Step 3 grants can be projected with reasonable accuracy based on the new construction grant requirement for five-year Project Priority Lists beginning in FY 1980.

POTWs with Active Grants

POTWs which are either on their grant schedule or had begun a continuous program of physical construction of the facility before July 1, 1977 (i.e., into

Step 3) can complete construction by July 1, 1983, and which meet the criteria of section 301(i)(1) as outlined in 40 CFR 125.93 should be granted 301(i)(1) extensions.

Generally, there are two major ways in which POTWs may be off grant schedules -- (1) preconstruction lag (POTWs that have been awarded grants but have not begun work, primarily at the Step 3 stage), or (2) POTWs that have begun work but have encountered delays. Only off-schedule POTWs that can be considered not to have caused funding or construction delays are immediately eligible for 301(i)(1) extensions (e.g., preconstruction lag occurred because State law prohibited the raising of matching local funds prior to the award of Federal funds).

Where delays exist, the Region or NPDES States should review the cause and nature of delay to determine whether compliance would better be assured by referral for judicial action, or issuance of a 301(i)(1) extension or a 309(a)(5)(A) administrative order. In determining that a judicial action should be taken against a POTW for failing to meet the July 1, 1977 deadline, the Agency has necessarily determined that the failure of the POTW to meet that deadline is attributable in significant measure to the POTW's own action or inaction rather than the unavailability of Federal funds. Since this determination is dispositive of 301(i)(1) requests, such requests should be denied for any POTW against which a judicial action for failure to construct necessary treatment works by July 1, 1977 has been filed or referred. However, where no referral for judicial action is either pending or planned, and if the cause and nature of any funding or construction delay is less serious, the Region or NPDES State should exercise its prosecutorial discretion through an administrative form of enforcement action prior to the 301(i)(1) determination

Step 3) can complete construction by July 1, 1983, and which meet the criteria of section 301(i)(1) as outlined in 40 CFR 125.93 should be granted 301(i)(1) extensions.

Generally, there are two major ways in which POTWs may be off grant schedules -- (1) preconstruction lag (POTWs that have been awarded grants but have not begun work, primarily at the Step 3 stage), or (2) POTWs that have begun work but have encountered delays. Only off-schedule POTWs that can be considered not to have caused funding or construction delays are immediately eligible for 301(i)(1) extensions (e.g., preconstruction lag occurred because State law prohibited the raising of matching local funds prior to the award of Federal funds).

Where delays exist, the Region or NPDES States should review the cause and nature of delay to determine whether compliance would better be assured by referral for judicial action, or issuance of a 301(i)(1) extension or a 309(a)(5)(A) administrative order. In determining that a judicial action should be taken against a POTW for failing to meet the July 1, 1977 deadline, the Agency has necessarily determined that the failure of the POTW to meet that deadline is attributable in significant measure to the POTW's own action or inaction rather than the unavailability of Federal funds. Since this determination is dispositive of 301(i)(1) requests, such requests should be denied for any POTW against which a judicial action for failure to construct necessary treatment works by July 1, 1977 has been filed or referred. However, where no referral for judicial action is either pending or planned, and if the cause and nature of any funding or construction delay is less serious, the Region or NPDES State should exercise its prosecutorial discretion through an administrative form of enforcement action prior to the 301(i)(1) determination

to give the POTW an opportunity to demonstrate its intention and ability to meet the new deadline.

By using enforcement actions short of referral first, the Region or NPDES State carries out enforcement actions in conjunction with an offer of Federal financial assistance. If a POTW fails to comply with such enforcement actions, the subsequent case for referral for judicial action will be strengthened because Agency program actions appear consistent to the court.

If a POTW complies with interim enforcement actions (confirming that it is taking all reasonable steps to comply with the Clean Water Act) and can meet the 1983 deadline, referral for judicial action is not necessary, and a 301(i)(1) extension may be granted. If the POTW did not request an extension and does not hold an ECSL or cannot meet the 1983 deadline, an administrative order may be issued. This approach does not mean that administrative orders are to be the enforcement mechanism of first choice in all cases. Where the POTW has a history of delay despite efforts by the Agency to urge the POTW to proceed, referral for judicial action should be considered the enforcement mechanism of first choice.

POTWs Without Active Grants

The right side of the flow chart (Figure A) addresses the three types of POTWs without an active grant: (1) those on the fundable portion of a State Project Priority List (PPL), (2) those not on the fundable portion of a PPL, and (3) those which completed final construction but are not meeting required effluent limitations. Some POTWs on the fundable portion of a PPL may not have applied for a grant. For those POTWs that fail to apply for a construction

grant in a timely manner, appropriate enforcement actions should be taken, informing such POTWs that funds are available and that they have either "X" days to apply for a grant or their 301(i)(1) request will be denied. If the POTW complies and enters into an active grant posture, a determination to issue a 301(i)(1) request or administrative order can be made based on the ability of the POTW to complete construction by July 1, 1983.

In the case of POTWs not on the fundable portion of the PPL, an effort should be made to elevate significant POTWs selected by the Region and NPDES State into the fundable portion of the PPL (i.e., move POTWs from Category III to II). In all cases, Enforcement will analyze the nature of the violation and determine if a revision to the POTW's project ranking appears to be justified. If, for example, the action was for an effluent violation resulting in serious stream degradation (e.g., precluding or restricting beneficial uses, or creating public health hazards), the Regional Administrator should contact the State to request that the POTW's project be considered for placement in the fundable range of the PPL.

If projects which do not meet the enforceable requirements of the Clean Water Act are proposed for funding, the Regional Administrator should ask the State to revise its PPL to rank the noncomplying POTW higher -- above the funding line, if possible (see 40 CFR 35.915). For example, should the fundable portion of the State PPL include pipe-related projects beyond the State's allowance of 25 percent not required to meet the enforceable requirements of the Clean Water Act, the Regional Administrator may ask the State to revise its Project Priority List to substitute a noncomplying POTW for one or more of the

pipe projects. All such requests should be made through and approved by the Regional program office responsible for PPL management.

The process of reevaluation of project priority does not increase the total funds available to the State for water pollution abatement. Thus, given a fixed amount of dollars allocated, increasing the priority of one project will decrease that of another. For States that have developed priority systems and lists in accordance with the September 27, 1978 construction grant regulations (see 40 CFR 35.915) and program guidance, it is expected that requests for reevaluation will be few and limited to those cases where it appears new information exists regarding the particular project in question that was not considered in establishing the project's priority.

When requests are made, the State will be asked to: (1) reevaluate the original priority rating, or (2) consider funding from the Step 1 and Step 2 grant reserve. If the State increases the priority rating or agrees to fund from the reserve, then Enforcement, if necessary, will issue a letter or administrative order soliciting an application, and the process would follow the pattern outlined in the section on Active Grants (see pages 10-12). Should the State deny increased priority, the POTW should be considered to have no Federal funding available by July 1, 1983, and hence may not meet the 1983 construction deadline necessary for granting of a 301(i)(1) extension. Since the POTW presents a significant pollution problem, serious consideration must then be given to bringing a judicial action under section 309 of the Clean Water Act.

Determining the appropriate compliance response (301(i)(1) permit extension, administrative order, or referral) is clearly dependent on grant

funding. Since a delay may be experienced in the development of more complex PPLs, the processing of some 301(i)(1) requests may be deferred until fiscal year 1980, and in the case of some minors, beyond fiscal year 1980.

POTWs Which Have Completed Construction

POTWs that have completed construction and are not meeting their NPDES permit limitations are not eligible for 301(i)(1) extensions and are candidates for various enforcement remedies.

Section 203(e) of the Clean Water Act authorizes the Administrator, at the grantee's request, to provide technical and legal assistance in the administration and enforcement of contracts necessary to construct treatment works. The extent of this assistance will depend upon available resources. The construction grant regulations (40 CFR 35.970) indicate the request must generally be made in writing, and States may also provide such assistance. The grantee is responsible for enforcing all contracts necessary to build the POTW independently of EPA.

PART V: ISSUANCE OF 301(i)(1) EXTENSIONS

Issuing or modifying NPDES permits to incorporate 301(i)(1) extensions is directly related to the construction grant process, and close coordination and sharing of information between the two program offices is required. Similarly, awarding or amending grants to POTWs that are issued 301(i)(1) extensions must also be coordinated so that fixed permit compliance milestones ensure that major construction grant dates are enforceable and consistent with grant agreements. Since the great bulk of program coordination will occur through the 301(i)(1) mechanism, the following chart (Figure B) illustrates how the Permits and Construction Grants staff must work together to formulate 301(i)(1) permit terms and conditions and award construction grants to POTWs with 301(i)(1) extensions. The same coordination must take place in formulating compliance schedules in administrative orders (see Part VI).

As shown, a suggested sequence of activities beginning in fiscal year 1979 for implementing the 301(i)(1) process at the Regional and State level would be as follows:

(1) Permits staff will provide the list of 301(i)(1) applicants to the Grants staff.

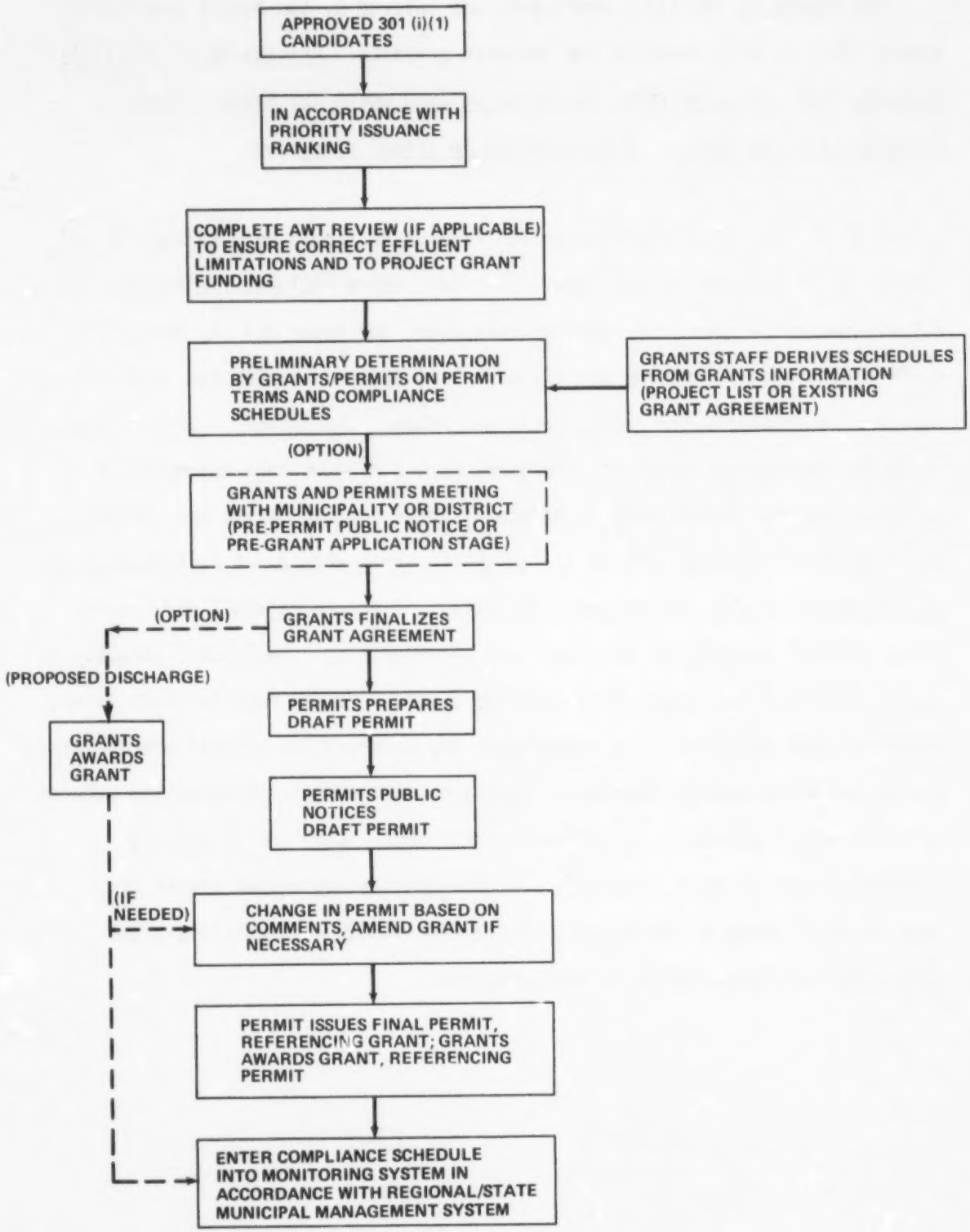
(2) Grants staff will determine which of the applicants are on the fundable portion of the PPL and supply the grants schedule to Permits staff.

(3) Permits and Enforcement staff will simultaneously prepare additional permit and compliance information in accordance with the suggested processing priorities in Part VII.

(4) Permits staff will determine which of the 301(i)(1) applicants have active grants through use of the Grants Information Control System (GICS) and will extract necessary project information from GICS. If the information is not available from GICS, then Grants will furnish all necessary information to Permits.

FIGURE B

APPROACH TO PERMIT ISSUANCE FOR APPROVED 301 (i)(1) EXTENSIONS


APPROVED 301 (i)(1) CANDIDATES
IN ACCORDANCE WITH PRIORITY ISSUANCE RANKING
COMPLETE AWT REVIEW (IF APPLICABLE) TO ENSURE CORRECT EFFLUENT LIMITATIONS AND TO PROJECT GRANT FUNDING
PRELIMINARY DETERMINATION BY GRANTS/PERMITS ON PERMIT TERMS AND COMPLIANCE SCHEDULES
GRANTS STAFF DERIVES SCHEDULES FROM GRANTS INFORMATION (PROJECT LIST OR EXISTING GRANT AGREEMENT)
(OPTION)
GRANTS AND PERMITS MEETING WITH MUNICIPALITY OR DISTRICT (PRE-PERMIT PUBLIC NOTICE OR PRE-GRANT APPLICATION STAGE)
(OPTION)
GRANTS FINALIZES GRANT AGREEMENT
(PROPOSED DISCHARGE)
PERMITS PREPARES DRAFT PERMIT
GRANTS AWARDS GRANT
PERMITS PUBLIC NOTICES DRAFT PERMIT
(IF NEEDED)
CHANGE IN PERMIT BASED ON COMMENTS, AMEND GRANT IF NECESSARY
PERMIT ISSUES FINAL PERMIT, REFERENCING GRANT; GRANTS AWARDS GRANT, REFERENCING PERMIT
ENTER COMPLIANCE SCHEDULE INTO MONITORING SYSTEM IN ACCORDANCE WITH REGIONAL/STATE MUNICIPAL MANAGEMENT SYSTEM

The remaining 301(i)(1) applicants not covered by the Permit Compliance System (PCS) or GICS would be the unfunded projects. Processing of 301(i)(1) requests from unfunded POTWs should be delayed until the State Project Priority List has been properly adjusted in fiscal year 1980.

A final list of eligible extension candidates should be developed by the Permits staff and sent to the Water Division. Where effluent limitations are established based upon water quality standards, the Water Quality Management staff generally will provide the effluent limitations; the Permits staff is not expected to develop water quality-related effluent limitations. When a project is either undergoing review for treatment more stringent than secondary or is awaiting such review pursuant to Office of Water Program Operations, Program Requirements Memorandum (PRM 79-7), an NPDES permit should not be issued prior to completion of that review (see Part VIII). The Permits staff will review these effluent limitations for legal and procedural (not technical) adequacy to assure that they are supportable and enforceable. If the Permits staff is not satisfied that the limits are supportable and enforceable, Permits should inform Grants and Water Quality Management of the nature of their concerns and attempt to reach mutual agreement on effluent limitations. Once the limits are acceptable, construction schedules will be developed by either Grants or Permits staff based on the project list and/or schedule in existing grant agreements and concurred on by both programs.

Once the schedule and effluent limitations information is available, the Permits staff will develop a draft permit based on information received from the Construction Grants and Water Quality Management staffs, and the Grants staff will develop a proposed grant award agreement.

The draft and final permit must include a compliance schedule which contains actual milestones derived from the grants process. The PCS and GICS systems have been reviewed, and the necessary and discretionary grant events that will make up the milestone dates will be listed in the Compliance and Grants Interaction Systems Workgroup Report (see Part X). At a minimum, the compliance schedule should contain dates for submission of the grant application to the State, project completion dates, the date for completion of construction, pretreatment milestones (see the Rhett-Miller memorandum on pretreatment program coordination dated November 28, 1978), and the date for achievement of final effluent limitations. *

Whenever possible, representatives knowledgable of both Permits and Construction Grants programs should be at meetings with the grantee/permittee to discuss the information placed in the draft NPDES permit and grant conditions. A pre-public notice, conference, and/or grant preapplication conference may also resolve certain permit problems before the permit is issued and thus reduce the number of evidentiary hearing requests.

---

* For a discussion of interim compliance date slippage, see 40 CFR 122.31(f)(3).

If no pre-public notice conference is held, the permittee should be made aware of the proposed schedule and allowed to comment on the schedule before public notice of the permit is given.

After the permittee has made any comments on the draft permit, the Permits staff will publish notice of the draft permit and make any changes resulting from the public notice. Permits and Construction Grants staffs should then jointly determine if such changes to the draft permit may affect the existing or proposed construction grant award. If so, the grant should be adjusted accordingly. The Permits staff would then issue the permit in final form. Depending on the circumstances, the final permit may be issued either before or after the award of the construction grant. Where the grant award satisfies permit requirements, Grants staff should reference the NPDES permit number in the grant, and Permits staff should reference the construction grant award identification number in the permit. It is not necessary to defer grant award until the permit is issued, unless significant permit issues directly affect the type of project for which the award is intended. However, if an evidentiary hearing is requested and granted on <u>construction grant-related issues</u>, both programs must again coordinate to share information necessary to resolve the evidentiary hearing (e.g., how schedules were developed, etc.). No grants to POTWs should be awarded that relate to the permit issue in question while relevant portions of the permit are stayed by the evidentiary hearing. Once the evidentary hearing is resolved, Permits should issue a final permit and Construction Grants should make necessary amendments to the grant award.

The Relationship of Section 301(h) to Section 301(i)(1)

In the Regions and NPDES States which have POTWs discharging into marine or estuarine waters, almost all POTWs which submitted preliminary applications for section 301(h) permit modifications also requested 301(i)(1) permit extensions. Where the POTWs submit final applications for 301(h) permit modifications, the 301(h) application should be processed first. * If the 301(h) is granted, it will be the basis for the new compliance schedule and the 301(i)(1) request becomes moot. If the 301(h) is denied, the 301(i)(1) request should then be considered in the same manner as other 301(i)(1) requests. Specifically, if the POTW can complete construction by July 1, 1983, the request should be granted; if the POTW cannot complete construction by July 1, 1983, the request should be denied and a 309(a)(5)(A) order may be issued not extending beyond July 1, 1983.

In some cases, the delay pending the 301(h) determination will force a POTW in Category I into Category II, and a 309(a)(5)(A) order must be issued rather than a 301(i)(1) extension. In order to minimize this occurance, POTWs should be advised to proceed with construction until they reach the critical point at which further construction will depend on EPA's decision concerning the 301(h) application.

---

* See 40 CFR 125 Subpart G, "Modification of Secondary Treatment Requirements for Discharges into Marine Waters."

PART VI: ISSUANCE OF 309(a)(5)(A) ADMINISTRATIVE ORDERS

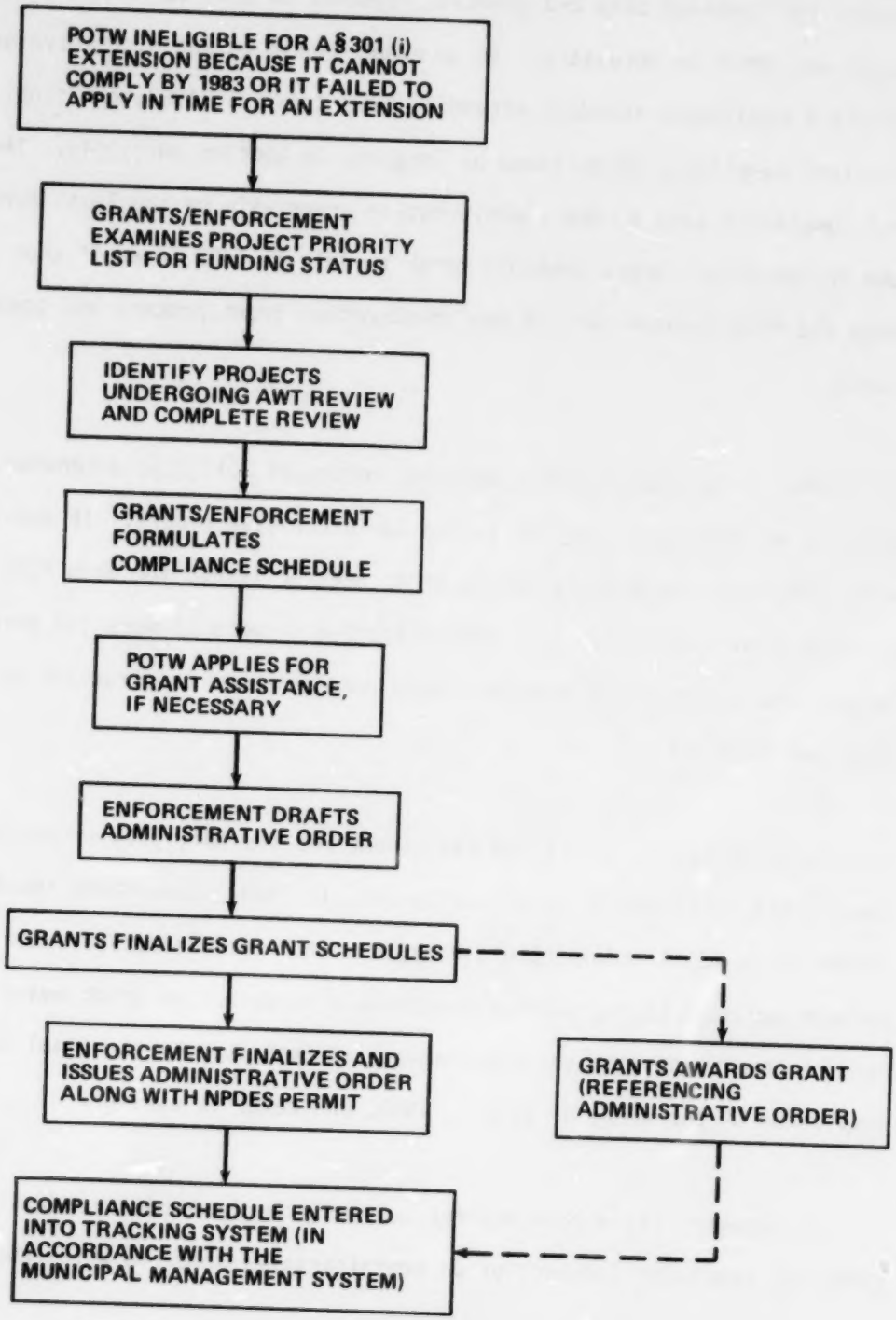
Where construction cannot be completed by July 1, 1983, a 309(a)(5)(A) order must be issued. The objective of issuing section 309(a)(5)(A) administrative orders in lieu of 301(i)(1) extensions is to establish an enforceable schedule for compliance based on progress which can be made up to 1983 -- even though the schedule does not require completion of construction. The following flow chart (Figure C) illustrates an approach to issuance of section 309(a)(5)(A) administrative orders (or comparable State procedural mechanisms) when used as a means to obtain an enforceable compliance schedule.

Section 309(a)(5)(A) administrative orders in lieu of 301(i)(1) extensions must always be issued (and notice given to the public) in conjunction with an underlying permit which requires compliance with the July 1, 1977 treatment requirements, except as described in Part VIII for treatment more stringent than secondary. Where section 309(a)(5)(A) administrative orders in lieu of 301(i)(1) extensions are appropriate, compliance schedules in the administrative order will be determined by the identified dates on which funding either is available in an existing grant agreement or will be available in projected grant funding derived from the approved Project Priority List. The coordination between Enforcement and Grant programs in the issuance of these orders should be the same as that discussed in Part V.

The contents of these 309(a)(5)(A) administrative orders will differ slightly depending on whether the administrative order is for a POTW in Category I, II, or III. Each administrative order is to contain a compliance schedule which reflects milestone dates derived from the grant process. Since

FIGURE C

APPROACH TO THE ISSUANCE OF §309 (a)(5)(A) ADMINISTRATIVE ORDERS


POTW INELIGIBLE FOR A §301 (i) EXTENSION BECAUSE IT CANNOT COMPLY BY 1983 OR IT FAILED TO APPLY IN TIME FOR AN EXTENSION
GRANTS/ENFORCEMENT EXAMINES PROJECT PRIORITY LIST FOR FUNDING STATUS
IDENTIFY PROJECTS UNDERGOING AWT REVIEW AND COMPLETE REVIEW
GRANTS/ENFORCEMENT FORMULATES COMPLIANCE SCHEDULE
POTW APPLIES FOR GRANT ASSISTANCE, IF NECESSARY
ENFORCEMENT DRAFTS ADMINISTRATIVE ORDER
GRANTS FINALIZES GRANT SCHEDULES
ENFORCEMENT FINALIZES AND ISSUES ADMINISTRATIVE ORDER ALONG WITH NPDES PERMIT
GRANTS AWARDS GRANT (REFERENCING ADMINISTRATIVE ORDER)
COMPLIANCE SCHEDULE ENTERED INTO TRACKING SYSTEM (IN ACCORDANCE WITH THE MUNICIPAL MANAGEMENT SYSTEM)

construction grants are awarded in steps, and the funding may not be continuous (except for combined Step 2+3 grants), issuance of succeeding administrative orders may often be necessary. In no event should an administrative order contain a compliance schedule extending beyond July 1, 1983, the final date for municipal compliance established by Congress in section 301(i)(1). Thus, the last compliance date in the administrative order will be the last identified date in the POTW's grant schedule prior to July 1, 1983, even if that date only takes the POTW through part of the construction grant process and toward final limits.

POTWs in Category I which have not requested 301(i)(1) extensions and which do not hold ECSLs may be issued administrative orders. It should be noted that only one administrative order need be issued for each POTW in Category I in this case. This administrative order will move the permittee through the entire grant process toward completion of construction by July 1, 1983 (see Part V).

POTWs in Categories II and III cannot receive 301(i)(1) extensions because construction will not be completed by July 1, 1983. Such POTWs should be issued 309(a)(5)(A) administrative orders. Each administrative order should reflect one step in the permittee/grantee's construction grant award and should require compliance with the requirements of that step by the final date for the completion of the step, or July 1, 1983, whichever is earlier.

In Category II, a POTW may not currently be funded beyond facility planning (Step 1), requiring issuance of an administrative order in which the final

compliance date will be the Step 1 completion date. Subsequent administrative orders would be issued incrementally, with compliance schedules reflecting the last dates of each construction grant award. Public notice need not be given for orders subsequent to the first.

In Category III, more than one administrative order may be necessary to carry the POTW as far as possible through the construction grant process by July 1, 1983, as grant milestones are identified. Again, public notice need not be given for orders subsequent to the first.

Administrative orders are intended to be managed like 301(i)(1) extensions. Thus, a POTW's compliance with its administrative order should be monitored as would a 301(i)(1) extension, and the enforcement response to any violations of such an administrative order would be carried out in accordance with procedures delineated in a Region or State's Enforcement Management System (see Part X).

Should a NPDES State propose to grant a 301(i)(1) extension to a POTW in Categories II, III, IV, V, or VI, the Region should object to and if necessary, veto the permit. When a NPDES State proposes to issue an administrative order in lieu of a 301(i)(1) extension to a POTW within Categories II or III, the Region should closely review the administrative order to assure that it comports with this National Municipal Policy and Strategy. If the order does not comport with this Policy and Strategy, for example, because the State administrative order goes beyond July 1, 1983, the Region should request that

the order be issued in conformity with this Policy and Strategy. If the State does not so modify the administrative order, the Region should inform the POTW and the State that the State order is without authority and that compliance with it alone will not protect the POTW from Federal enforcement. Further, the Region always retains its right to take enforcement action independent of any State enforcement action.

PART VII: PRIORITIES FOR ISSUANCE OF EXTENSIONS AND ADMINISTRATIVE ORDERS

Optimum use of resources is required in the issuance of modified permits and administrative orders and the awarding of construction grants if the 1983 deadline is to be met. Following is the priority in which these activities should occur:

PRIORITY FOR ISSUING 301(i)(1) EXTENSIONS AND 309(a)(5)(A) ADMINISTRATIVE ORDERS

1. Active Grants with Pretreatment Requirements

   --Step 3
   --Step 2
   --Step 1

2. Grantees on Fundable (One Year) Portion of Project Priority List (Grants not yet awarded)

   --Step 3
   --Step 2
   --Step 1

3. Active Major Grantees (Funded from Previous Project Priority List)

   --Step 3
   --Step 2
   --Step 1

4. Active Minor Grantees (Funded from Previous Project Priority List)

   --Step 3
   --Step 2
   --Step 1

5. Unfunded

This priority ranking takes several considerations into account including the Agency's emphasis on toxic substances control, funding availability, ability to formulate fixed date permit schedules, and size and environmental effect of the discharge.

Pretreatment Priorities

The General Pretreatment Regulations (40 CFR 403) require POTWs with design flows of greater than 5 mgd to develop pretreatment programs (POTWs with flows of 5 mgd or less may be required to develop a pretreatment program in certain circumstances). Compliance schedules for development of pretreatment programs must be incorporated into all such permits when the permits are reissued or modified (e.g., when a permit is reissued or modified to incorporate a 301(i)(1) extension). Some NPDES States have the authority to place pretreatment compliance schedules in permits prior to the approval of State pretreatment programs. Where NPDES States do not have the authority to write pretreatment compliance schedules prior to State pretreatment approval, the NPDES permit must contain a reopener or modifier clause (see 40 CFR 403.10(d)(1)) and the permit must be subsequently modified, or revoked and reissued. Alternatively, in those NPDES States lacking such pretreatment authority, issuance of NPDES permits to POTWs with pretreatment requirements may be deferred until the State obtains this authority.

Federal funding for the development of pretreatment programs is available under the Construction Grants Program. The construction grants regulations (40 CFR Subpart E) require the completion of certain elements of the pretreatment program prior to award of Step 2 grants after June 30, 1980, the

completion of the remaining elements prior to award of Step 3 grants after December 31, 1980, and the approval of a POTW pretreatment program by the 90 percent completion stage of Step 3. The pretreatment regulations (40 CFR 403) require POTW pretreatment program approval by July 1, 1983, or three years after the permit is either modified or reissued, whichever is earlier. It is anticipated that it will take up to six months after submission of the program to obtain approval. Accordingly, submission of an approvable pretreatment program should be six months before the 90 percent Step 3 completion stage, or 2-1/2 years after the permit is modified or reissued, or January 1, 1983, whichever is earlier.

Given the above deadlines, the first order of priority of the Construction Grants Program must be to amend existing grants as soon as possible to provide for development of pretreatment programs. Similarly, issuance of permits to provide for pretreatment programs is of top priority.

Funding Availability and Schedule Development

The second order of priority is POTWs on the fundable portion of the Project Priority List. These POTWs represent the fiscal year's workload for the Construction Grants Program and will require construction to comply with NPDES permit limitations.

The priority established for issuing 301(i)(1) extensions requires Step 3 projects to be processed first, Step 2 second, and Step 1 last. The rationale in support of this hierarchy is that, generally speaking, more information is available at the later steps in the grant process. Additionally, schedules

with shorter time intervals and hence with a greater accuracy will be developed, thus either minimizing or reducing the possibility of formal permit modification due to the inclusion of unrealistic dates in the NPDES permit. In the case of schedule development for Step 2 and Step 3 projects for which facility planning requirements (Step 1) have been completed, the States or Regions are to establish the appropriate time intervals required to complete Step 2 and Step 3 projects, and, together with the dates of funding availability contained in the State's PPL, to specify accurate fixed dates for initiation and completion of the step. A key point to note is since funding is available for these POTWs, 301(i)(1) permits are required to contain fixed schedule dates.

Many of the factors which led to the utilization of the "trigger date" schedule in the past have either become moot or less relevant. Thus the Agency has reevaluated its position regarding continued utilization of this type of schedule and the 301(i) regulations (40 CFR 125.94 (a)(1)) now requires use of fixed dates.

Of the three step grant process, Step 1, which provides for development of facility plans, has been the most difficult to maintain on schedule. A number of other Federal statutes (e.g. the Historic Preservation Act, Endangered Species Act, National Environmental Policy Act, Wild and Scenic Rivers Act, and certain Executive Orders) establish requirements which may affect the scope of the planning process and hence the completion date in mid-course. The scope of the project may also be revised as a result of the public hearing required prior to approval of the facility plan under the Construction Grant regulations.

In recognition of the above, the fixed schedule approach adopted in the NPDES regulations distinguishes Step 1 schedule development from that of Steps 2 and 3. Under this approach, the Step 1 schedules would be based upon the expected date of the Step 1 award, in consideration of availability of Federal funding, and establishment of an appropriate time period to complete Step 1 work, based on the estimated project scope and the project's ranking on the PPL for Step 2 funding. Fixed dates would then be incorporated in the NPDES permit and would also serve as the basis for the grant period in the subsequent grant award. The permit may be conditioned to expire at that completion date. For active Step 1 grants for which the permit is expected to expire prior to completion of the Step 1 project and for which permit reissuance is urgent, it must be determined if planning has progressed to the point where a completion date can be specified and the required schedule (40 CFR 35.917-1(a)) for completion of Steps 2 and 3 is available. Where this information is available, the schedule should be checked against the PPL. If the schedule dates precede dates of funding availability, the schedule should be adjusted to reflect the earliest expected date of grant eligibility. If those dates fall outside the fundable range of current allotments, the Regions or States should assume appropriations to the extent indicated in the Agency's annual operating guidance. In the event facilities planning has not sufficiently progressed to establish Step 2 and Step 3 schedules, the permit should be conditioned to expire or be modified shortly after the date of project completion contained in the Step 1 grant awarded as previously discussed.

Schedules for which Step 1 activities have been completed prior to permit reissuance should be developed based upon the grantee's submitted schedule and Federal funding availability, allowing for reasonable Agency review time.

Agency review time should be established based on State and Regional experience, average review times as determined from Grants Information Control System (GICS) data, Regional workplans, output commitments, or the Zero Base Budgeting process.

In the case of segmented projects where more than one Step 2 or Step 3 grant exists or is expected to be awarded, schedules should be developed as previously discussed for each significant project segment for inclusion in the NPDES permit. For this purpose, a significant project segment is one for which completion is necessary in order for the permittee to meet final permit limitations or a project for which a delay would result in delay of attainment of final effluent limits by the date established in the NPDES permit. If there is any question concerning whether a project segment is significant under this definition, Grants, Permits, and Enforcement staff should jointly arrive at a final determination. Individual or multiple permit schedules should clearly identify the associated construction grant project number.

Priority numbers 3 and 4 are consistent with past policy for issuance of NPDES permits. Priority number 5 is self-explanatory.

PART VIII: TREATMENT MORE STRINGENT THAN SECONDARY

In considering the fiscal year 1979 appropriations bill for the construction grants program, the Appropriations Conference Committee indicated that the Administrator must personally approve all projects providing treatment more stringent than secondary (see Appropriations Conference Committee Report, Amendment No. 23). The Report states that Federal funds may be awarded for construction of such advanced treatment with an incremental cost of more than $1,000,000 only if the Administrator personally determines that it will definitely result in significant water quality and public health improvements. The advanced treatment review requirement will affect the permit process and enforcement under the Clean Water Act in a number of ways.

During the grant award review period for advanced projects, some NPDES permits requiring treatment more stringent than secondary will expire. Since compliance schedules and final effluent limitations in the reissued NPDES permit depend upon the results of the review, these permits should not be reissued until the initial review is completed in accordance with the Office of Water Program Operations, Program Requirements Memorandum (PRM) 79-7. However, advanced projects are to be promptly identified.

In all cases where the NPDES permit, whether current or expired, requires treatment more stringent than secondary and the PRM review has not been completed, enforcement of effluent limitations requiring the more stringent treatment should be deferred pending completion of the review. The POTW should proceed with any fundable steps which can be taken toward achievement

of secondary treatment as long as such steps are not incompatible with the more stringent facility design.

In some cases (e.g., where 1977 NPDES permit requirements have not been clearly established and the NPDES permit has expired), it may be necessary to issue a section 309(a)(5)(A) administrative order (absent an underlying NPDES permit) which incorporates interim effluent limitations and a schedule of compliance to assure progress toward the installation of secondary treatment.

Five possible determinations may be expected from the PRM review process:

(1) The more stringent project as proposed is fully justified and is fully fundable (although the project may not currently be on the fundable portion of the Project Priority List); or

(2) The more stringent level of treatment required of the POTW was based on incorrect or inadequate water quality analysis and, therefore, the more stringent portion of the project as proposed is not required and is not fundable, but a lesser level of treatment is justified and is fundable; or

(3) The more stringent level of treatment required of the POTW was based on incorrect or inadequate water quality analysis, and advanced treatment may not be required to satisfy water quality requirements, but additional information is needed to determine what is the appropriate and fundable treatment level; or

(4) The more stringent level of treatment is justified but a reevaluation of the cost-effective analysis and/or design of the entire project or portion of the project is recommended to arrive at a less costly treatment alternative or configuration; or

(5) Treatment greater than secondary is required to achieve more stringent State requirements, but the greater level of treatment has been determined by the PRM review to be ineligible for construction grant funding, and the State has chosen not to relax its requirements.

Should the PRM review result in determinations (1) or (2) above, the POTW will fall into one of the categories of POTWs as outlined in Part III and should be dealt with accordingly.

Determinations (3) or (4) above could result in funding being deferred for the entire facility or any element of the facility pending the further information gathering and subsequent analysis. In these situations, although the final PRM review is not complete, the process previously discussed for determining eligibility for a 301(i)(1) extension under Part IV of this document should be applied. Should application of this process result in a POTW falling into Categories I, II or III as outlined in Part III, the appropriate requirements of any construction grant or grant amendment awarded the POTW for purposes of gathering additional information are to be incorporated into the NPDES permit or 309(a)(5)(A) order, whichever instrument is applicable under this National Municipal Policy and Strategy.

If the PRM review results in determination (5), the reissued permit must contain final effluent limitations which are necessary to meet the more stringent State requirements. However, since the more stringent treatment will not be Federally funded in these instances, enforcement of these permit requirements calls for special consideration. For Federally-issued permits, there should be a commitment from the non-NPDES State prior to permit issuance to enforce the more stringent requirements.

With regard to enforcement by EPA, if the POTW has not significantly contributed to construction delays, enforcement of more stringent than secondary requirements imposed pursuant to determination (5) should be postponed, and a construction schedule taking the POTW through to completion of that portion of the project which the PRM review has determined to be fundable (secondary treatment at a minimum) should be required, generally by means of a section 309(a)(5)(A) administrative order. If, however, the POTW subsequently violates its compliance schedule, action to enforce the more stringent treatment requirements consistent with the Municipal Referral Priority System (see Part IX) is appropriate. Even though a POTW has expeditiously completed construction to the fundable treatment level, the more stringent requirements are legally enforceable.

The State may elect to relax its more stringent requirements to the level which has been determined by EPA's PRM review to be fundable. In that case, the NPDES permit may be modified to require the less stringent final effluent limitations, and a compliance schedule for achievement of the fundable treatment level should be established.

PART IX: MUNICIPAL REFERRAL PRIORITY SYSTEM

Purpose

The Municipal Referral Priority System (MRPS) is a system for identifying and setting priorities for case referrals to the Department of Justice by EPA and to State Attorneys General by the State. This system assumes that enforcement actions short of referral, if appropriate, have been taken and did not achieve the desired results.

Referral for judicial action against POTWs which failed to meet the July 1, 1977 treatment requirements can have one or more of the following results:

- o assessment of penalties for past violations in accordance with the April 11, 1978 Penalty Policy Memorandum
- o imposition of judicially enforceable compliance schedules
- o penalties for noncompliance with the judicially imposed schedules
- o appointment of a special master
- o sewer hook-up bans as authorized by section 402(h) of the Clean Water Act
- o the availability of the funding necessary for completion of construction as a result of 309(e) of the Clean Water Act

NPDES States which have the authority to assess administrative penalties should do so first, because administrative penalties contain some (but not all) elements present in the referral process and may achieve the desired results more expeditiously than referral for judicial action.

NOTE: Judicial action against POTWs which did not significantly contribute to delays in construction and for which judicial action is necessary to assure the availability of construction grant funding will not ordinarily seek assessment of penalties for past violations.

Scope

Candidates for judicial action under the MRPS are: (1) all POTWs for which construction is needed but which do not qualify for a 301(i)(1) extension and will not receive a 309(a)(5)(A) administrative order (Category VI): (2) recipients of section 301(i)(1) permit extensions, 301(h) permit modifications, ECSLs, or administrative orders which subsequently violate such extensions, ECSLs or administrative orders; and (3) POTWs which have completed construction but are not meeting the final effluent limits or other requirements of permits (Category V). POTWs in Category IV which are subject to referral as a means of moving the POTW into Category II are discussed in a separate section in this Part entitled, Special Enforcement.

Effect of 301(i)(1) Request on Initiated Referrals

In determining that a judicial action should be taken against a POTW for failing to meet the July 1, 1977 deadline, the Agency has necessarily determined that the failure of the POTW to meet that deadline is attributable in a significant measure to the POTW's own action or inaction rather than the unavailability of Federal funds alone. Since this determination is dispositive of 301(i)(1) requests, requests in these cases should be denied for any POTWs against which such a judicial action has been filed or referred. The initiated referral shall continue unaffected by the MRPS.

Procedure

The referral priority rank for a POTW is based on the POTW's size and treatment level, with possible adjustments if certain factors are present. The

referral priority ranking of each POTW within either an EPA Region or a NPDES State should be derived as follows:

(1) List all major POTWs in the Region or State according to population served, from the largest to the smallest (regional sewer authorities should be ranked according to the total population served by the regional POTW); and

(2) Rank those POTWs into three population-served groups (POTWs with populations greater than or equal to 100,000, POTWs with populations from 50,000 to 99,999, and all other POTWs); and

(3) Within each of these three population groups, rank the POTWs according to current treatment level:

  (a) POTWs with no treatment (raw sewage dischargers).

  (b) POTWs with primary treatment installed and waste treatment required.

  (c) POTWs with primary treatment installed and secondary treatment required.

  (d) POTWs with intermediate treatment installed and advanced waste treatment required.

  (e) POTWs with intermediate treatment installed and secondary treatment required.

  (f) POTWs with secondary treatment installed and advanced waste treatment required.

  (g) POTWs with secondary treatment installed but not in compliance with effluent limitations.

  (h) POTWs with advanced wastewater treatment installed but not in compliance with effluent limitations.

(4) Within each of the eight current treatment level groups, rank POTWs according to the following eight priority factors in order of importance:

  (a) Significant drinking water use/public health hazard;

  (b) Fisheries, shellfish and protected areas, and/or scenic and recreational areas threatened;

(c) Failure to develop adequate pretreatment programs or to operate an approved program under 40 CFR 403, or have had a spill of toxic and/or hazardous materials within the previous calendar year;

(d) Preconstruction lag greater than twelve months (see Office of Water Program Operations, Program Requirements Memorandum 78-12);

(e) POTW is eligible but has not applied for a grant (more than six months late);

(f) POTW is eligible but has not applied for a grant (less than six months late);

(g) Blatant disregard of standard operation and maintenance (O&M) procedure;

(h) Poor O&M practices which have detrimental effects on POTW performance.

Special Enforcement: Public Health and Fragile Ecosystems

Development of a referral priority list should not be perceived as restricting the Region's discretion to immediately pursue actions against other significant municipal pollution sources where violations of a POTW's NPDES effluent criteria result in a threat to the general public health and safety in an area. The POTW would move into a top priority position for the allocation of Regional and State resources, overriding the normal order of referral as established by the MRPS.

Consideration for special enforcement may be given on a case-by-case basis for municipalities causing damage to fragile ecosystems, defined as fisheries or special recreational areas. Such requests should be made in writing to the Deputy Assistant Administrator for Water Enforcement.

Special Enforcement: Category IV

Additionally, selected POTWs which would otherwise fall into Category III should be candidates for referral when the POTWs are causing either significant threats to the public health and safety or damage to fragile ecosystems, and they are low on the State Project Priority List. In these cases, the referral mechanism is the best or only one available to assure prompt achievement of NPDES permit requirements.

Implementation

EPA Regional Offices are required to use the MRPS to produce lists of identified Regional and NPDES State municipal referral candidates. As POTWs fail to meet the terms and conditions of their ECSLs, administrative orders, permit modifications or extensions, or are deemed to be enforcement candidates under MRPS, they should be added to the MRPS lists and ranked accordingly. Candidates ranked according to MRPS include those POTWs in the municipal Major Source Enforcement Effort (MSEE) which have violated the July 1, 1977 statutory deadline for the installation of secondary treatment technology.

PART X: FORMULATING A MUNICIPAL MANAGEMENT SYSTEM

An overall Municipal Management System (MMS) will serve as the key mechanism through which EPA Regional and State Enforcement and Grants staffs develop formal operating procedures to support preparation of compliance schedules in 301(i)(1) extensions and 309(a)(5)(A) administrative orders as well as to respond to instances of noncompliance when they occur. While the emphasis of this system will be on updating the current Enforcement Management System (EMS), numerous grants management activities must be added.

Four work groups were specified in the "Interim National Municipal Policy and Strategy" (September 1978). These workgroups, comprised of State and EPA representatives, met in the period from November 1978 through March 1979 and addressed the following subjects:

- o Permits and Grants interaction
- o Compliance and Grants information systems
- o Noncompliance response guidance
- o State-U.S. EPA cooperation

The products of the four municipal workgroups are designed to provide a more detailed framework for Regional and State program managers to implement the policies herein. The municipal workgroup products provide for:

- o Issuing effective NPDES permits
- o Developing a common data link between the Permit Compliance System (PCS) and the Grants Information Control System (GICS)

- Implementing a consolidated noncompliance response guide for coordinating Grants and Enforcement response
- Developing formal Regional and State operating procedures for dealing with POTWs
- Instituting time frame controls for implementing action steps specified in the MMS